

Application No.: 10/054,328
Express Mail: EH 161914101 US

Fluorophosphate glass and method for
making thereof

THE UNITED STATES PATENT AND TRADEMARK OFFICE

#19

Application No. : 10/054,328
5 Filing Date : 20 JAN 2002
First Named Inventor : Alfred A. MARGARYAN
Petition Examiner : David Bucci
10 Office Action Mailing Date : 06 JAN 2009
Response Due Date : 09 FEB 2009

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Renewed Petition under 37 CFR §1.137(a) and (a)

Mail Stop: PETITIONS
Commissioner for Patents
20 P.O. Box 1450
Alexandria, VA 22313-1450

TO THE COMMISSIONER FOR PATENTS:

25 In reply to the dismissed petition mailed on 06 JAN 2009, the Applicant(s)
respectfully request the entry and consideration of the attached documents (if any) as a
collective statement that the entire delay in filing the required reply from the due date for
the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(a) and (b)
was unavoidable and, indeed, unintentional.

REQUEST FOR RECONSIDERATION OF DISMISSED PETITION:

The following comments direct the Office of Petitions to the exact location of text found within all of the previously submitted petitions and renewed petitions (including their respective attachments) for answers to the comments and questions of the Dismissal

5 Decision of 6 JAN 2009. In order to obtain a better understanding of the circumstances involved and the context within which those texts appear, the Petitioner very respectfully requests the Office of Petitions to revisit, and carefully reread the following previously submitted petitions and renewed petitions, including their respective attachments.

Complete, detailed, and thorough answers to all questions and comments of the Dismissal

10 Decision of 6 JAN 2009 is found in the following submitted documents:

- The "SUPPLEMENTAL STATEMENT ESTABLISHING UNINTENTIONAL DELAY UNDER 37 CFR 1.137(b)" filed 6 JUN 2006, including all attachments;
- 15 • The "Renewed Petition under 37 CFR 1.137(b)" filed 23 JULY 2007, including all attachments; and
- The "Additional Sheets Containing Statement Establishing Unavoidable Delay under 37 CFR 1.137(a)" filed 22 OCT 2008, including all attachments.

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The following comments are further clarifications related to the comments and questions of the Dismissal Decision of 6 JAN 2009:

The Office of Petitions states on page 2, line 3:

25 "Petitioner takes the position that the failure to timely reply to the final Office action of November 18, 2003 was due to the actions or inactions of Dr. Lindsey."

It is respectfully submitted that the Petitioner has always taken the position that the failure of timely reply to the final Office action of November 18, 2003 was due to inappropriate, unethical, fraudulent, deceitful, and unlawful conduct of Dr. Lindsey.

5 The Office of Petition further states on page 2, lines 12 to 14:

“The Petition implies that Beech and Illare never communicated directly with each other from the time of August 15, 2003 Employment Agreement until after the abandonment of the Application.”

10 It is respectfully submitted that the Petitioner did not merely imply that Mr. Beech and Mr. Illare never communicated directly with each other from the time of August 15, 2003 Employment Agreement until after the abandonment of the Application. The Petitioner has always explicitly expressed that no communications were made between Mr. Beech and Mr. Illare, direct or otherwise from the time of August 15, 2003
15 Employment Agreement until after the abandonment of the Application. The evidence from Mr. Beech himself (submitted with the previous petitions and renewed petitions) plainly shows that Mr. Beech and Mr. Illare never communicated. Mr. Illare and Mr. Beech did not know each other.

20 The Office of Petitions on page 2, lines 20-22 state:

“The application record shows that Beech filed timely response to the first Office action (12/19/02) and the second Office action (5/30/03). Did Beech confer with and get instructions from Lindsey and/or Illare before filing these responses?”

25 Mr. Beech conferred with and received instructions from Dr. Lindsey for the first Office action. For the reply to the second office action, Mr. Beech had no choice but to confer and receive instructions from Dr. Lindsey because Mr. Beech was not aware of Mr. Illare or his responsibilities at the time of filing of reply to the second Office action. As has been indicated numerous times in all the petitions and renewed petitions filed, Dr.

5 Lindsey kept Mr. Beech isolated from all parties, including Dr. Margaryan. Again, the evidence from Mr. Beech himself (submitted with the previous petitions and renewed petitions) plainly shows that Mr. Beech communicated with Dr. Lindsey, and was not at all aware that Mr. Illare was fully responsible for all final decisions regarding any patent matter.

The Office of Petitions on page 2, lines 23-24 states:

10 “Was Illare aware of the instant patent application at the time of Employment Agreement of August 15, 2003?”

Mr. Illare was aware of the existence of a fluorophosphates application at the time of Employment Agreement of August 15, 2003. In fact, as indicated in all of the previously submitted petitions and renewed petitions, Mr. Illare was aware of the existence of a fluorophosphates application even before the Employment Agreement of August 15, 2003. However, again, as indicated in all of the previously submitted
15 petitions and renewed petitions, Mr. Illare did not know any specifics with respect to the instant patent application to identify it to take appropriate action. Despite numerous requests by Mr. Illare for information regarding the instant application, Dr. Lindsey never provided Mr. Illare any information, and always falsely assured Mr. Illare that the patent
20 was on track to be issued.

The Office of Petitions on page 2, lines 27 to 28 states:

25 “At the time Beech received the final Office action, was he aware that Illare was responsible for all final decisions regarding any patent matter?”

The evidence from Mr. Beech himself (submitted with the previous petitions and renewed petitions) plainly shows that Mr. Beech was not at all aware that Mr. Illare was fully responsible for all final decisions regarding any patent matter. In fact, as was indicated in all of the previously submitted petitions and renewed petitions Mr. Beech did

not know Mr. Illare. That is one reason why Mr. Beech forwarded all communications to Dr. Lindsey in California, and nothing was mailed to the official company address in Florida. Again, due to Dr. Lindsey's embezzlement of funds from Nano Teknologies, Dr. Lindsey kept all information, including contact information between Mr. Illare and Mr. Beech hidden.

The Office of Petitions on page 2, lines 28-29 states:
"If he [Mr. Beech] was not [aware that Mr. Illare was responsible for all final decisions], when did he [Mr. Beech] become aware of Illare's responsibility in regard to patent matters?"

It was not until the beginning of 2006 that Mr. Beech became ware of Mr. Illare, his position, and responsibilities. For further evidence, please see the following citations from the previously submitted petitions and renewed petitions:

- Supplemental statement establishing unintentional delay under 37 CFR 1.137(b) filed 6 JUN 2006, page 4, lines 23 to 34.
- The petition filed under unavoidable provisions of 37 CFR 1.137(a) filed 22 OCT 2008, page 22, lines 4, to page 23, line 15, which establishes the date of initial contact between Mr. Beech and Mr. Illare based on actual dates of emails exchanged between Dr. Margaryan, Mr. Ashot Margaryan, and Mr. Illare.

The Office of Petitions on page 2, lines 32-33 states:
"The second paragraph on page 10 of the instant petition states that Illare made numerous requests to Lindsey for information regarding the instant application. Specifically, when were these requests made?"

Oral requests were made numerous times by telephone conversations between Dr. Lindsey and Mr. Illare. Regrettably, Dr. Lindsey has passed away, and therefore, cannot

be subpoenaed to provide a written statement affirming the oral requests made by Mr. Illare. As for evidence of written communications in relations to the requests from Mr. Illare, please see the following citations from the previously submitted petitions and renewed petitions:

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- The supplemental statement establishing unintentional delay under 37 CFR 1.137(b) filed on 6 JUN 2006, page 2, line 42 to page 3, line 9.
- The supplemental statement establishing unintentional delay under 37 CFR 1.137(b) filed on 6 JUN 2006, page 4, lines 11 to 12.
- 10 • The renewed petition under 37 CFR 1.137(b) filed on 23 JULY 2007, page 5, lines 24 to page 16, line 19.
- The renewed petition under 37 CFR 1.137(b) filed on 23 JULY 2007, page 11, lines 14 to page 16, line 11.
- Additional sheets containing statement establishing unavoidable delay under 37
- 15 CFR 1.137(b) filed on 22 OCT 2008, page 10, lines 10 to 17, page 17, lines 13 to page 19, line 24.

The Office of Petitions on page 2, lines 34-35 states:

20 “Did Illare make any attempt to contact Beech when it was clear that Lindsey was not responding to his requests?”

25 The short answer is yes. However, Mr. Illare did not know Mr. Beech to contact him. Again, Dr. Lindsey never provided to Mr. Illare any information regarding Mr. Beech. Further, as evidenced from Mr. Beech himself (submitted with the previous petitions and renewed petitions), Mr. Beech did not know Mr. Illare. Of course, after meeting with Dr. Margaryan, Mr. Illare did contact Mr. Beech several times. However, it was not until late 2005, early 2006 that Mr. Beech finally responded after Mr. Illare, his attorney, and Dr. Margaryan all demanded that Mr. Beech immediately forward all information regarding the patent application to Mr. Illare or face legal action.


Please see the following citations from the previously submitted petitions and renewed petitions in relations to Mr. Illare's contact with Mr. Beech:

- 5 • The supplemental statement establishing unintentional delay under 37 CFR 1.137(b) filed on 6 JUN 2006, page 4, line 23 to line 34
- The petition filed under unavoidable provisions of 37 CFR 1.137(a) filed 22 OCT 2008, page 22, lines 4 to page 23, line 15.

10 The Petitioner respectfully requests the entry and consideration of this renewed petition under 37 CFR 1.137(a) and (b), including all attached documents (if any) as a collective statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(a) and (b) was unavoidable, and indeed, unintentional, and respectfully solicit the granting of the

15 petition pursuant to 37 C.F.R. §1.137(a) and (b).

20 February 9, 2009
Date


JACK J. ILLARE, III